

**SUBCHAPTER 540**

**PAY UNDER TITLE 38--ADDITIONAL PAY  
FOR CERTAIN HEALTHCARE PROFESSIONALS**

**TABLE OF CONTENTS**

<b><u>SECTIONS</u></b>	<b><u>Page</u></b>
A. Purpose	540-1
B. Coverage	540-1
C. Definitions	540-2
D. Policy	540-2
E. Computation of Pay	540-3
F. Tour Differential	540-4
G. Weekend Duty	540-4
H. Holiday Pay	540-4
I. Overtime Pay	540-5
J. On-Call Duty (“Beeper” or “Pager” Pay)	540-5
K. Compensatory Time Off	540-6
L. Payments During Periods of Leave and Authorized Absence	540-6
M. Higher Rates of Additional Pay	540-7
N. Record-Keeping Requirements	540-7

## **SUBCHAPTER 540**

### **PAY UNDER TITLE 38--ADDITIONAL PAY FOR CERTAIN HEALTHCARE PROFESSIONALS**

- References:**
- (a) Title 5, United States Code
  - (b) Title 38, United States Code
  - (c) Delegation Agreement Between the Office of Personnel Management and the Department of Defense, November 30, 1993, and December 20, 1993, respectively, concerning the use of certain personnel authorities for healthcare occupations
  - (d) DoD Directive 6025.13, "Clinical Quality Management Program in the Military Health Services System," July 20, 1995
  - (e) DoD Directive 1400.25, "DoD Civilian Personnel Management System," November 25, 1996
  - (f) Title 5, Code of Federal Regulations
  - (g) Chapter 8 of title 29, United States Code, "The Fair Labor Standards Act"

#### **A. PURPOSE**

This section provides rules for compensating employees paid additional pay under 5 U.S.C. 5371 (reference (a)) and 38 U.S.C. 7453 and 7454 (reference (b)) as authorized by 5 U.S.C. 1104 (reference (a)) and the Delegation Agreement between the Office of Personnel Management (OPM) and the Department of Defense (reference (c)).

#### **B. COVERAGE**

1. This section covers:

- a. A permanent or temporary full-time, part-time, or intermittent nurse (including a nurse anesthetist);
- b. A permanent or temporary full-time, part-time, or intermittent physician assistant (PA), expanded function dental assistant (EFDA); or,
- c. Certain other healthcare professionals including non-physician health care providers as defined in DoD Directive 6025.13 (reference (d)).

2. A full-time nurse, covered by 38 U.S.C. 7456 (reference (b)) and Subchapter 541 of this Manual (the Baylor Plan), below, who is regularly scheduled to work two 12-hour tours of duty on weekends may not receive additional pay for work performed during the nurse's regularly scheduled tours of duty.

## **C. DEFINITIONS**

1. **Additional Pay.** A premium paid to an employee for working under circumstances or conditions as authorized under 38 U.S.C. 7453 (reference (b)) and this section. Such pay includes tour differential, holiday pay, and pay for weekend duty, overtime work, and on-call duty.

2. **Category of Nurse or Other Healthcare Professional.** A nurse or group of nurses, or healthcare professional or group of healthcare professionals who performs service within a specialization of the nursing or other specific healthcare occupation.

3. **Dental Treatment Facility.** A DoD dental facility staffed and equipped to provide dental care to eligible beneficiaries. It may be affiliated with or independent of a medical treatment facility. A dental treatment facility is funded by the Defense Health Program.

4. **Lead Agent.** The officer who, in addition to commanding a medical center within one of twelve geographic regions within the United States, is responsible for coordinating healthcare initiatives within the region. The lead agency has no direct authority over the tri-Service commanders within the region. However, he or she works in a collaborative manner with the Military Health Services System partners to manage the delivery of healthcare within the region.

5. **Medical Treatment Facility.** A DoD health facility staffed and equipped to provide inpatient and/or outpatient medical care to eligible beneficiaries. It may be affiliated with or independent of a dental treatment facility. A medical treatment facility is funded by the Defense Health Program.

6. **Nurse.** A registered nurse, nurse anesthetist, or licensed practical or vocational nurse, but does not include a graduate nurse technician, or student nurse technician.

7. **Rate of Basic Pay.** The rate of pay fixed by law or administrative action for the position held by the employee including any locality pay under 5 U.S.C. 5304 (reference (a)) or special salary rate authorized under 5 U.S.C. 5305 (reference (a)) and 38 U.S.C. 7455 (reference (b)).

8. **Tour of Duty.** The hours of a day and the days of an administrative workweek that constitute an employee's regularly scheduled workweek, including regularly scheduled overtime work.

## **D. POLICY**

It is DoD policy under DoD Directive 1400.25 (reference (e)) that:

1. The head of a DoD Component, or his or her designee, may approve the use of this additional pay authority in lieu of premium pay under Chapter 55 of 5 U.S.C. (reference (a)) for a category of nurse or other healthcare professional in any DoD medical or dental treatment facility

under his or her jurisdiction. This authority may be delegated to a commander of a medical or dental treatment facility, or its equivalent, but no lower.

2. The decision to approve the use of this additional pay authority for a category of nurse or other healthcare professional must be coordinated with the commander(s) and /or director(s) of all other Federal healthcare facilities in the local area to ensure that all Federal nurses or other healthcare professionals in similar situations are treated in the same manner. Where there are differences in staffing situations, equal compensation is not necessarily appropriate.

3. The lead agent of the appropriate military health services region must be notified when any provision of 38 U.S.C. (reference (b)) is implemented within that region. The lead agent may monitor the use of a reference (b) provision implemented within the region to determine its impact on healthcare delivery.

4. Authority to use additional pay will be approved based on recruitment and retention problems caused by local private and non-Federal public pay practices.

5. The commander of a medical or dental treatment facility, or its equivalent, shall ensure that all affected nurses or other healthcare professionals are granted additional pay on a fair and equitable basis.

6. The commander of a medical or dental treatment facility, or its equivalent, may terminate additional pay authorized for any nurse or other healthcare professional under this section when such pay is no longer necessary to meet recruitment or retention needs. Such termination is not an adverse action. However, an affected employee must be notified of the intent to terminate the use of this additional pay authority as soon as practicable before the use of the authority is terminated.

#### **E. COMPUTATION OF PAY**

1. Additional pay under sections F. through J. of this Subchapter, below, for a nurse or other healthcare professional--including additional pay for a full-time nurse who is regularly scheduled to work two 12-hour tours of duty on weekends--is based on an hourly rate of basic pay derived by dividing the employee's annual rate of basic pay by 2087 and rounded to the nearest whole cent, counting one-half cent and over as a whole cent.

2. The biweekly and annual limitations on premium pay under 5 U.S.C. 5547 (reference (a)) do not apply to a nurse or other healthcare professional covered by this section.

3. An employee receiving additional pay under 38 U.S.C. 7453 and 7454 (reference (b)) and this section may not receive premium pay under Chapter 55 of 5 U.S.C. (reference (a)) and 5 CFR 550, Subpart A (reference (f)), and is exempt from the overtime provisions of Chapter 8 of 29 U.S.C. (reference (g)) and 5 CFR 551, Subpart E (reference (f)).

4. When a nurse or other healthcare professional is entitled to more than one type of additional pay for the same period of service, the amounts are calculated separately on the basis of the employee's hourly rate of basic pay as defined in subsection E.1. of this Subchapter, above.

5. An employee may not receive overtime pay under section I. of this Subchapter, below, in addition to holiday pay under section H., below, for the same period. An employee who works in excess of 8 hours in a day on a holiday receives holiday pay under section H., below, for each hour of work on that day.

6. Additional pay is not considered basic pay for the purposes of civil service retirement, Federal Employees Group Life Insurance, compensation for work injury, lump-sum annual leave payments, severance pay, or other benefits relating to basic pay.

#### **F. TOUR DIFFERENTIAL**

A nurse or other healthcare professional on a tour of duty, any part of which falls between 6 p.m. and 6 a.m., who works 4 or more hours between 6 p.m. and 6 a.m., shall be paid additional pay for each hour of work on such tour. When fewer than 4 hours of work fall between 6 p.m. and 6 a.m., a nurse or other authorized healthcare professional shall be paid additional pay for each hour of work performed between 6 p.m. and 6 a.m. Tour differential pay is 10 percent of the employee's hourly rate of basic pay, unless a higher tour differential is approved under the authority in section M. of this Subchapter, below.

#### **G. WEEKEND DUTY**

A nurse or other healthcare professional on a tour of duty, any part of which falls between midnight Friday and midnight Sunday, shall be paid additional pay for each hour of work during such tour. A nurse or other healthcare professional who has two separate tours of duty, each of which qualify as weekend duty, shall be paid additional pay for each hour of both tours. Additional pay for weekend duty is 25 percent of the employee's hourly rate of basic pay, unless a higher rate is approved under the authority in section M. of this Subchapter, below.

#### **H. HOLIDAY PAY**

1. A full-time nurse or other healthcare professional on a 40-hour basic workweek who works on a holiday shall receive for each hour of work on the holiday basic pay plus additional pay at a rate equal to the employee's hourly rate of basic pay unless a higher rate is approved under the authority in section M. of this Subchapter, below. When the basic workweek of a nurse or other authorized healthcare professional includes portions of two tours on a holiday, the holiday benefit shall apply to the shift that begins on the holiday.

2. When a full-time nurse or other healthcare professional performs work on a holiday, such duty is deemed to be at least 2 hours in duration for the purposes of holiday pay.

3. A part-time or intermittent nurse or other healthcare professional shall be paid holiday pay only for work performed on the actual calendar holiday; i.e., no in lieu of day will be designated.

4. A full-time nurse, whose basic tour of duty is two 12-hour tours on weekends (i.e., a nurse who is covered by the Baylor Plan, 38 U.S.C. 7456 (reference (b))), may not receive holiday pay for work that is performed during the employee's regularly scheduled tour of duty.

## **I. OVERTIME PAY**

1. A nurse or other healthcare professional (except a nurse covered by 38 U.S.C. 7456 (reference (b)) and Subchapter 541 of this Manual) who performs work that is officially ordered and approved in excess of 40 hours in an administrative workweek, or in excess of 8 hours in a day, shall receive overtime pay at a rate of one and one-half times his or her hourly rate of basic pay. A nurse or other healthcare professional covered by a compressed work schedule shall receive overtime pay for hours of officially ordered and approved work in excess of the compressed work schedule.

2. Except as otherwise provided, irregular or occasional overtime work of less than 1 hour will be calculated in increments of 15 minutes. An employee must perform at least 15 minutes of such overtime work to receive additional pay for such work.

3. Overtime work performed by a nurse or other healthcare professional on a day when work was not scheduled, or for which he or she is required to return to the work place, is deemed to be at least 2 hours in duration for the purposes of overtime pay. When an employee is called from on-call duty to perform overtime work, these provisions apply and the on-call duty is suspended.

4. Overtime pay under this section is not limited by the provisions of 5 U.S.C. 5542 (a)(2) (reference (a)).

## **J. ON-CALL DUTY ("BEEPER" OR "PAGER" PAY)**

1. A full-time nurse or other healthcare professional officially scheduled to be on-call outside his or her regularly scheduled duty hours or on a holiday shall be paid 10 percent of his or her applicable overtime rate (under section I. or M. of this Subchapter, below) for each hour of on-call duty. On-call duty shall be suspended during any period of actual overtime work. When the employee is released from a period of overtime work, the employee returns to his or her remaining scheduled on-call duty, if any, and receives additional pay for on-call duty accordingly.

2. A part-time or intermittent nurse or other healthcare professional is entitled to receive additional pay for on-call duty when he or she is regularly scheduled to be in an on-call status. When called back to work, such an employee shall be paid his or her hourly basic rate of pay for non-overtime work and/or overtime rate for overtime work.

3. When an employee performing on-call duty is required to return to work, the time spent performing actual work is deemed to be at least 2 hours in duration for pay purposes. An

employee may not also be paid additional pay for on-call duty for periods that are deemed to be actual work under this provision.

4. While in an on-call status, an employee must be available to return to work promptly. If an employee is incapacitated or otherwise unavailable to return to work during a period of scheduled on-call duty, the employee must report his or her incapacitation or unavailability to the official authorizing the duty. An employee who is relieved from performing scheduled on-call duty is not entitled to pay for such duty.

#### **K. COMPENSATORY TIME OFF**

1. An employee may request in writing and be granted compensatory time off in lieu of overtime pay for regularly scheduled or irregular and occasional overtime work. The amount of the compensatory time off will equal the amount of time spent in overtime work. An intermittent employee may not request and be granted compensatory time off in lieu of payment for overtime work.

2. An employee may not be required to accept compensatory time off in lieu of payment for overtime work.

3. Compensatory time off should be used as soon as possible after it is earned but not later than the end of the twenty-sixth pay period following the pay period in which it is earned. Any unused compensatory time off shall be paid at the overtime rate at which it was earned.

4. A full-time nurse, whose basic tour of duty is two 12-hour tours on weekends (i.e., a nurse who is covered by the Baylor Plan, 38 U.S.C. 7456 (reference (b))), may not be granted compensatory time off in lieu of overtime pay.

#### **L. PAYMENTS DURING PERIODS OF LEAVE AND AUTHORIZED ABSENCE**

1. A nurse or other healthcare professional may not be charged leave during periods of regularly scheduled on-call duty; nor may such an employee receive additional pay for regularly scheduled on-call duty when, because of leave or other authorized absence, the employee is not expected to be able to return to work immediately.

2. When on court leave, or military leave, a nurse or other healthcare professional is entitled to such additional pay as he or she otherwise would have received.

3. When on annual or sick leave, or on compensatory time off, a nurse or other healthcare professional is entitled to tour differential pay for a period of paid leave only when the total amount of leave in a pay period is less than 8 hours.

4. When excused from work because of a holiday or in lieu of holiday, a nurse, or other healthcare professional is entitled to any otherwise appropriate tour differential pay.

**M. HIGHER RATES OF ADDITIONAL PAY**

38 U.S.C. 7453(j) (reference (b)) provides the authority to approve higher rates of additional pay than allowed in sections F. through J. of this Subchapter, above. At this time, this authority is reserved.

**N. RECORD-KEEPING REQUIREMENTS**

The commander of a medical or dental treatment facility, or its equivalent, and the affected director of personnel shall keep adequate records to evaluate the use of this authority as required by the Assistant Secretary of Defense for Health Affairs. Such records shall include:

1. How the authority is used by the facility;
2. The location of the facility;
3. The type of occupations covered; and,
4. Any other pertinent data that may be required to evaluate the overall use of the authority by the Department of Defense and OPM.